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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of C.W., A.W., and J.W., Minor Children, and Patricia W., Parent,	)	
PATRICIA W.,	)	
Appellant-Respondent,	)	
vs.	)	No. 82A05-0712-JV-658
VANDERBURGH COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-0605-JT-48, -49, and -54

May 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Patricia W. ("Mother") appeals the involuntary termination of her parental rights to her children, A.W., J.W., and C.W. Mother raises one issue on appeal, which we restate as whether the trial court's judgment terminating Mother's parental rights to her children is supported by clear and convincing evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of A.W., J.W., and C.W.[1] The facts most favorable to the judgment indicate that Mother, who began using marijuana when she was twelve years old, has an extensive history of substance abuse including alcohol and marijuana abuse and cocaine dependency. In August 1998, Vanderburgh County Department of Child Services ("VCDCS") Caseworker Patty Roedel became involved with Mother because her two oldest daughters, who had been removed from Mother's care and placed with their biological father, had been left unattended. The children were taken into protective custody and Mother "cooperated completely" with the VCDCS by remaining drug-free and by participating in services. As a result of her compliance, in December 1998, Roedel informed Mother that she had "no reason not to give her back her children[,]" and discussed returning them in January. *Tr.* at 323. However, in January 1999, Mother suffered a drug relapse and for the next several months checked herself in and out of treatment.

[1] The alleged fathers of A.W., J.W., and C.W., namely, Scott King, Juan Cardinez, and Leon Augustin, respectively, failed to participate in the proceedings below and are not parties to this appeal.

In June 1999, Mother became pregnant with A.W. and began to participate in services again. A.W. was born in March 2000, tested drug-free, and remained in Mother's care. Additionally, in June 2000, Mother regained custody of her two older daughters. However, on August 9, 2000, Mother called Roedel and "demanded" that the two girls be removed from her care. *Id.* at 325. Mother also informed Roedel that she wanted to terminate her parental rights to both girls. The girls were removed.

Two weeks later, Mother placed then five-month-old A.W. up for adoption with the GLAD Adoption Agency. However, in October 2000, Roedel received a call from GLAD that Mother no longer wished to go through with the adoption and wanted A.W. back in her care. At that time, the VCDCS filed a petition alleging A.W. was a child in need of services ("CHINS"). A.W. was subsequently made a ward of the State on October 5, 2000, and placed in foster care. Mother thereafter suffered a drug relapse on October 18, 2000. For the next several months, Mother would visit sporadically with her children while checking herself in and out of treatment, until January 23, 2001, when she requested a court hearing for the voluntary termination of her parental rights. On January 25, 2001, Mother appeared for the termination hearing, but changed her mind.

From February 2001 to May 15, 2001, Mother again relapsed and used drugs. However, the VCDCS's wardship over A.W. was later dismissed in June 2002 because Mother had become drug-free and had remained so for several months, as well as complied with services. Mother's sobriety did not last, however, and on March 19, 2003, Dennis and Christine Hoehn agreed to take guardianship of A.W. so that Mother could enter drug treatment. The Hoehns' guardianship of A.W. was later dismissed in July 2005.

Meanwhile, on July 26, 2004, Mother gave birth to J.W., who tested positive for cocaine. Mother later admitted to using cocaine several times a month while she was pregnant. J.W. was discharged from the hospital on July 28, 2004, and immediately taken into protective custody. On the same day, the VCDCS filed a petition alleging J.W. was a CHINS. Mother was appointed counsel, and on September 15, 2004, Mother admitted J.W. was a CHINS and was assigned to drug court. On October 22, 2004, Mother entered into a Parental Participation Plan pertaining to J.W. wherein Mother was ordered to, among other things: (1) attend and successfully complete drug court and substance abuse treatment, and remain free from all mood-altering substances; (2) obtain and maintain adequate housing; (3) obtain and maintain legal employment or source of income; and, (4) exercise visitation as recommended by the family caseworker in order to achieve reunification with J.W. Mother failed to appear, however, for a scheduled court date on January 19, 2005, and a writ was issued. Mother turned herself in to the Vanderburgh County Jail on June 6, 2005. At the time, Mother was pregnant with C.W. and due on July 16, 2005. Mother tested positive for cocaine and admitted to using cocaine twice per week.

On July 7, 2005, Mother gave birth to C.W., who also tested positive for cocaine. C.W. was immediately removed from Mother. On July 13, 2005, the VCDCS filed a petition alleging both C.W. and A.W. were CHINS. The CHINS petition was subsequently granted, and on September 6, 2005, the trial court issued its Dispositional Order requiring Mother to participate in the same or similar services as previously ordered to achieve reunification with J.W.

On May 3, 2006, the VCDCS filed a petition for the involuntary termination of Mother's parental rights to A.W. and C.W. On May 22, 2006, the VCDCS filed a petition to terminate Mother's parental rights to J.W. as well. A consolidated hearing commenced on May 10, 2007, and concluded on May 24, 2007. On June 28, 2007, the trial court terminated Mother's parental rights to all three children. This appeal ensued.[2]

DISCUSSION AND DECISION

Mother alleges the VCDCS failed to prove by clear and convincing evidence each element set forth in IC 31-35-2-4(b)(2) as is required for the involuntary termination of parental rights.

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*.

Here, the trial court made specific findings in terminating Mother's parental rights. Where the trial court enters specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Secondly, we determine whether the findings support the judgment. *Id.* In deference

[2] On March 26, 2008, this Court issued an order for the trial court to submit specific findings in support of its judgment terminating Mother's parental rights to the children. The trial court filed separate

to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the court's conclusions, or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * *

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

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findings under each cause number with the Clerk's Office on April 29, 2008.

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother's sole allegation on appeal is that the VCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in the children's removal from her care will not be remedied, and that continuation of the parent-child relationship poses a threat to the children's well being. Specifically, Mother claims that the VCDCS based its decision to seek the involuntary termination of Mother's parental rights on "unstable housing, inconsistent employment, and questions concerning her treatment and recovery from her drug addiction[;]" however, "none of these conditions existed . . . when the termination hearing was held." *Appellant's Br*. at 6-7. Mother further asserts that the VCDCS "points to [Mother's] prior drug use as posing a threat to the well-being of the children. But given the fact that [Mother] has been clean for almost two years, . . . regularly attends multiple NA meetings each week, [and] . . . visits regularly with a counselor[,] . . . [Mother] has made significant progress toward addressing her addiction." *Id.* at 12. Thus, Mother concludes there is "insufficient evidence to warrant the extreme measure of terminating her parental rights." *Id.* at 13.

Initially, we observe that IC 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus,

only one of the two requirements of subsection (B) must be found by clear and convincing evidence. *L.S.*, 717 N.E.2d at 209. We will first review whether the trial court's finding that there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied is supported by clear and convincing evidence.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The VCDCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." *In re Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there is a reasonable probability Mother's behavior will not change, and thus the conditions resulting in the children's removal will not be remedied, the trial court made the following pertinent findings:[3]

FINDINGS OF FACT

* * *

20. At the time of the trial, [Mother] had been residing at Henning

[3] For clarification purposes, we point out that the trial court issued separate judgments under separate cause numbers in terminating Mother's parental rights to each child. However, the language contained in the findings and conclusions cited to herein, although numbered differently, is identical.

Avenue for approximately six (6) months. It has two bedrooms and has a six (6) months lease. Her address before Henning Avenue was on Edgar Street, where she resided for about eight months or so. Before Edgar Street, [Mother] lived in a shelter, Potter's Wheel[,] for approximately four (4) months. Before the Potter's Wheel, she stayed at the YWCA for approximately four (4) months on the second floor. She had been transitioning into [the] THRP program on the third floor for persons recovering from addiction. She left the THRP program after a short time, because she did not want to have people tell her when she can come and go.

21. [Mother] has an addiction to cocaine which started in approximately 1999. At the time of trial, she had been clean for (2) years. While [Mother] should be applauded for being able to remain clean for the last two years[,] she is still a high risk to relapse . . . .

22. [Mother] has a diagnosis of Attention Deficit Hyperactivity Disorder and [has] been diagnosed also with post[-]traumatic stress. [Mother] is currently taking twenty-five milligrams of Desipramine twice a day for the ADHD.

23. [Mother] goes to NA meetings three (3) to (5) times per week and has therapy at Stepping Stone on a weekly basis.

* * *

25. The longest period that [Mother] has gone without using cocaine since she started eight (8) years ago is three (3) years. This prior period was from when she was pregnant with [A.W.] to when he was about two (2) years of age.

26. When the Hoehns had guardianship of [A.W.], [Mother] did not visit him "hardly at all." After [J.W.] was born, [Mother] did not visit consistently with her. The reason that [Mother] did not visit with [A.W.] or [J.W.] was that she was using cocaine.[4]

* * *

34. There was a previous terminations (sic) filed in the earlier wardship

[4] In the judgment pertaining to A.W., the exact language of the second sentence of this finding was worded as follows: "After [J.W.], [A.W.'s] sister was born, [Mother] did not visit consistently with her either."

> of [A.W.]. Because [Mother] had been drug free for eight or nine months, the termination was evidently dismissed as also was eventually the wardship. She later used cocaine during the pregnancy of both of her subsequent children.
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> 39. [Mother] has been provided parenting classes, parent aides, Love for Life treatment, supervised visitation, and random drug screens.
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> * * *
>
> CONCLUSIONS OF LAW
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> * * *
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> 6. [Mother] has a pattern of unstable employment and housing. She has failed to provide a stable environment for any of her children while they were in her care.
>
> 7. [Mother] has a pattern of long periods of abstinence follow[ed] by relapses in regard to her cocaine addiction.
>
> 8. The Court now finds by clear and convincing evidence that the allegations of the petition to terminate parental rights are true in that:
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> * * *
>
> b. There is a reasonable probability that the conditions that resulted in [the children] being removed from, and having continued placement outside the care and custody of [Mother] will not be remedied.

Trial Court's Judgment at 3-6. Our review of the record reveals that there is clear and convincing evidence supporting the trial court's findings set forth above. These findings, in turn, support the trial court's ultimate decision to terminate Mother's parental rights to A.W., J.W., and C.W.

The record reveals that Mother has a significant history of drug abuse involving

recurrent periods of abstinence where, for a period of time, Mother would be in complete compliance with all court orders, but each period of abstinence would be followed by relapse. As a result, Mother's current caseworker, Janet Flikke, recommended that the trial court terminate mother's parental rights to all three children. When asked if there were any additional services that could be provided to Mother to help her become a safe and suitable parent, Flikke responded:

> Well . . . besides the fact of everything that we've offered her, [Mother] has always gone out and sought out other things, I mean, when I first met [Mother] she gave me a laundry list of things she was wanting to do . . . like Ark Parenting, she was gonna go to Love for Life. And she sought out all these different parenting classes and all these different treatment agencies. . . . I helped her try to find long[-]term treatment. I also helped her with . . . a parent aide, with visitation . . . and I don't think that there's anything right now available left to offer her.

Tr. at 337-38. Flikke went on to testify that despite the fact Mother had "[a]bsolutely" participated in services, she still had concerns regarding Mother's parenting ability. *Id.* at 338. Flikke further stated that Mother never progressed in visitation and that she was concerned that Mother would relapse. In so doing, Flikke stated, "[Mother] [admitted] to Patty Roedel, myself, and both CASAs, that . . . she's been clean for three years and she still went back. And, um, when things get stressful for her, she has in the past, her history has shown, that she's relapsed." *Id.* at 366. Additionally, Flikke testified that Mother had not been consistent with submitting to drug screens for the three months leading up to the termination hearing.

In determining whether a reasonable probability exists that the conditions justifying the children's removal and continued placement outside the home will not be remedied, it

was incumbent upon the trial court to judge Mother's credibility and weigh the evidence of changed conditions against the testimony demonstrating Mother's habitual patterns of conduct. Thus, although any improvement in Mother's ability to care for the children since the filing of the CHINS petition is relevant, the trial court's inquiry could not stop there. The trial court was required to evaluate Mother's habitual patterns of conduct to determine their long-term effect on Mother's recent improvement. *In re W.B.*, 772 N.E.2d 522 (Ind. Ct. App. 2002). Additionally, as stated previously, we cannot reweigh the evidence or judge the credibility of witnesses. *See In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (holding that mother's arguments that conditions had changed and she was now drug free constituted impermissible invitation to reweigh evidence).

Although we acknowledge and commend Mother's efforts to improve herself, these improvements came at a time when Mother was not burdened with caring for three young children. Mother's ability to remain sober and properly parent the children with the additional stress of full-time childrearing remains unknown. Based on the foregoing, we cannot say that the trial court committed clear error when it found Mother's recent success in treatment was overshadowed by her lengthy history of repeated drug relapses.[5] *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that trial court did not commit reversible error when it gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several

[5] Having concluded the trial court's finding regarding the remedy of conditions is supported by clear and convincing evidence, we need not consider whether the VCDCS proved by clear and convincing evidence that continuation of the parent-child relationship poses a threat to the children's well being. *L.S.*, 717 N.E.2d at 209.

years prior to termination hearing than to mother's evidence that she had changed her life to better accommodate children's needs); *see also W.B.*, 772 N.E.2d at 530-31 (concluding that trial court's judgment terminating parental rights rested on sufficient evidence, despite fact that by the time of the termination hearing parents had cooperated with all service providers, completed parenting classes, and obtained suitable and stable living conditions, in light of the parents' history of neglect and involvement with the Department of Child Services). Accordingly, we find no error.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.